

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-206901

DATE: April 5, 1983

MATTER OF: Decilog, Inc.

DIGEST:

1. While agency should have advised offerors, in writing, of a change in the level-of-effort estimate contained in the solicitation, since offerors were advised during discussions of recommended changes in their proposed staffing level needed to conform to the revised level of effort the failure to issue a written amendment was not prejudicial to offerors.
2. Where protester was informed of the deficiencies in its technical proposal during initial negotiations and of the need to increase its level of effort during the second negotiation session the agency fulfilled its obligation to point out deficiencies during discussions. The agency is not obligated to help bring the protester's lower rated proposal to the level of the awardee's higher rated proposal.

Decilog, Inc. protests the proposed award of a contract to Zycor, Inc. under request for proposals DAAK70-81-R-1157 issued by the Army Mobility Equipment Research and Development Command for analysis of the Defense Mapping Agency's cartographic production processes. Decilog complains that the agency changed its estimate of the number of hours required to perform the project set forth in the solicitation as well as the scope of work without amending the solicitation as required by the regulations and improperly failed to point out deficiencies in its proposal. We deny the protest.

This solicitation for an analysis of the Defense Mapping Agency's Hydrographic/Topographic cartographic production system, including data collection, computer modeling, and the preparation of optimum production plans contemplated the award of a cost-plus-fixed fee type

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contract. The solicitation stated that the effort was to be performed in a 20-month period and set forth an estimated level-of-effort estimate of 7,360 staff hours. It also listed the prime evaluation factors as (1) Technical Approach, (2) Organization, Personnel, Experience and Facilities and (3) Cost and provided that the first two factors were to be given approximately equal weight. Cost was to be given less weight than the other two factors.

On the August 24, 1981 closing date the Army received five proposals. The agency conducted a technical and cost evaluation of these proposals and concluded that four of the five proposals received were acceptable. It also appears that during this initial evaluation the agency first concluded that the Government estimate included in the solicitation did not contain an adequate number of staff hours to perform the project.

The agency then held discussions with each of the firms submitting acceptable offers. While there is no memorandum in the record documenting these discussions, it appears that these discussions primarily concerned matters relating to deficiencies in the offerors' technical proposals. In late October, the firms submitted revised proposals based on these discussions.

In November, the agency conducted a cost evaluation of these revised proposals. A memorandum dated November 16 indicates that the agency increased the Government estimate of the effort required to 9,650 staff hours. The memorandum states that this increase was due primarily to the agency's view that in order to accomplish the project more effort needed to be expended on data collection and analyses. The memorandum also showed that each offeror's proposed level of effort was compared with the revised Government estimate, and the evaluators concluded that Decilog's proposed level of effort for data collection and analyses was 2,570 hours short of the Government's revised estimate.

As a result of the second evaluation, the agency again held discussions with all the remaining offerors. According to a statement submitted by the contract specialist responsible for this procurement, discussions were held with Decilog on January 28, 1982 and that firm was advised that it should increase its proposed subcontractor effort for data collection and analyses.

The agency requested that best and final offers be submitted by February 12. These offers were evaluated by the Army and Zycor's offer was chosen for award based primarily on its high technical rating. Decilog, whose final offer was not evaluated as offering the lowest cost nor rated highest technically, then protested the proposed award selection to the Army and to our Office.

Decilog argues that the increase in the Government's level-of-effort estimate from 7,360 hours, as stated in the solicitation, to 9,650 hours represented a significant change in the scope of the project specified in the solicitation and should have resulted in a solicitation amendment. Decilog believes that if a solicitation amendment had been issued it would have been able to study the new requirements and submit a revised proposal which would have met these requirements. Decilog also argues that the agency, as a result of its revision of the level-of-effort estimate, improperly dictated the cost increase included in that firm's best and final offer. We agree with the protester that the agency should have issued a written amendment to the solicitation. However, we deny the protest because we believe that under the circumstances this omission did not prejudice Decilog and that otherwise the Army conducted this procurement properly.

The Army initially contends that the protest, filed here on March 29 and with the Army a few days earlier, is untimely because Decilog should have filed its protest by February 9, the date for submission of best and final offers, since its protest concerns matters which occurred during the Army's conduct of negotiations on January 28. We do not agree. Decilog's primary basis for protest is that the Army acted as it did during negotiations without informing offerors, through an RFP amendment, that the estimate had changed. Although Decilog obviously knew that the Army had some reason for asking for the revised proposal, Decilog asserts that it did not know, during those negotiations, that the estimate had been revised, and the Army has not established otherwise. Since the record does not indicate when Decilog learned of the revised estimate, we cannot view its protest as untimely.

The record shows that during the evaluation period, the agency concluded that the level-of-effort estimate included in the solicitation was inadequate. The Army states that this increase did not result from a change in the solicitation's requirements or scope of work, as the

protester contends, but from the evaluators' conclusion that the project as originally described could not have been properly performed using the designated level-of-effort estimate.

Although the Army's characterization of the change appears to be correct--only the anticipated effort needed to perform the work changed, not the work itself--it is clear that it should have been the subject of a written solicitation amendment since the solicitation contained the original estimate. See Defense Acquisition Regulation § 3-805.4. However, while Decilog asserts that it did not know of the estimate revision, we think the Army in effect placed Decilog on notice of the revision of the level-of-effort estimate when it recommended that the protester increase its proposed level-of-effort for data collection and analysis to a specified level, which would bring the proposal in line with the revised estimate. Decilog was thus not prejudiced by the agency's failure to issue a written amendment because the Army provided it with the necessary information and the opportunity to amend its proposal to conform to the agency's revised view of the level-of-effort needed to perform this project. See Education Turnkey Systems, Inc., 57 Comp. Gen. 8 (1977), 77-2 CPD 267.

The protester, however, also complains that it was provided not with information but with an order that its proposal be structured in a particular manner, and was therefore deprived of the opportunity to revise its proposal as it saw fit.

Decilog was indeed advised during the discussions that it should increase its effort in the specific areas of data collection and analyses. The protester was also advised of what the agency viewed as a proper labor mix. Decilog, in fact, followed the agency's advice, as far as we can determine, without complaint, and submitted a revised proposal.

We see nothing improper with these discussions. Decilog was always free to modify or not modify its proposal to reflect what it was told by the agency (although it would have acted at its own peril had it chosen not to provide what the agency indicated it was seeking), regardless of whether the agency provided only oral advice or issued a formal amendment. Thus, despite the fact that the agency should have issued an amendment,

we do not agree that the protester was compelled to do anything here that it otherwise would not have done. Therefore, we find no merit to this aspect of the protest.

Finally, Decilog argues that the agency failed to point out deficiencies in its offer during the second negotiation session held in January. It seems to be the protester's position that although some technical deficiencies were raised during the October discussions nothing other than the effect of the Army's increased level-of-effort estimate was discussed during the final negotiations. In this regard, Decilog refers to "new Decilog deficiencies" which allegedly resulted from the agency's altered level-of-effort estimate.

We find it difficult to understand Decilog's contention that it was not informed of deficiencies in its proposal. It admits that technical problems were discussed during the October negotiation and that it was permitted to submit a revised proposal based on those discussions. While it is true that only matters concerning Decilog's level of effort were discussed during the January 28 negotiations there is nothing in the record to indicate that any "new technical deficiencies" resulted from this revised estimate.

Generally, an agency is obligated to bring deficiencies to the attention of offerors and to permit them to revise their proposals. Educational Electronics Corporation, B-198545.6, April 12, 1982, 82-1 CPD 332. Here, Decilog was informed of problems in its technical proposal and of the impact of the level-of-effort increase on its cost proposal and given two opportunities to revise its proposals. The agency simply was not required to help Decilog improve its lower rated proposal until it equaled that of Zycor. See Ford Aerospace & Communications Corporation, B-200672, December 19, 1980, 80-2 CPD 439.

We note that an underlying theme of the protest is Decilog's belief that its original proposal was "adequate" to perform the project and that but for the increase in cost required by the agency's insistence on more effort, it would have received the award. The record does not support this view. Decilog's original proposal received a lower overall rating than Zycor's proposal even though it scored higher under the cost factor. Decilog simply was not able to improve its rating during discussions to overtake Zycor. While Decilog's original proposal was "adequate"

and was included within the competitive range, the agency viewed both Zycor's initial and revised proposals as superior.

The protest is denied.

for *Milton F. Fowler*
Comptroller General
of the United States